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WOODSVILLE SDN. BHD.

v.

TIEN IK ENTERPRISES SDN. BHD. & 4 ORS. (CONSOLIDATED WITH 3 OTHER
PETITIONS)

b

HIGH COURT MALAYA, KUALA LUMPUR
DATO'SITI NORMA YAAKOB J.
[COMPANIES (WINDING-UP) NO.D2-28-187-901
9 JUNE 1994]

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COMPANY LAW: *Winding-up - Whether should be voluntary or compulsory - Just and equitable - Relationship between members akin to partners - Whether there was delay in initiating winding-up proceedings.*

d

The 1st respondent was incorporated in 1978, during Kuok Sr's lifetime. It was one of the family companies intended to be the vehicle through which the family fortune was to be enhanced. A pool fund was also established with the common understanding that Kuok Sr. would manage it with the assistance of his children during his lifetime and upon his death or retirement, all his children would have equal say in the management and eventual disposal of the pool fund. From 1987 until 1989, Peter Kuok took over the reins of managing the 1st respondent and the other family companies. Disputes arose as to the manner in which the pool fund was invested and utilised through the family's investment arm, the 1st respondent. The 2nd -5th respondent's, appointed and executive committee to take over the functions of the board of the 1st respondent. This last attempt to oust Peter Kuok from the affairs of the 1st respondent, prompted Peter to file a winding-up petition through his nominee company, the petitioner, seeking to have the 1st respondent wound up under s. 218 (1) (i) of the Companies Act.

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Held:

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[1] From the very beginning this day, the members of the 1st respondent, who provided capital for the company from the pool fund, were confined to the children of Kuok Sr. or their nominees and in that sense it is a domestic company. Although they subscribe to the memorandum and articles of association, the nature of the formation and set up of the 1st respondent, their obligations as members go beyond that laid down by the memorandum and articles of association. The 1st respondent is definitely a family association made up by the children and grandson of Kuok Sr. and it is their personalities as such that single out the 1st respondent to be a company where the member's relationship is akin to that of partners.

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[2] Given the special circumstances of this case, the position that Peter was placed in, the delay that occurred cannot prejudice his right to have this petition presented and determined. On the peculiar facts of this case, there is no question of Peter having consented to the 2nd respondent's irregular conduct.

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*[Ordered accordingly]***Cases referred to:**

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Ebrahimi v. Westbourne Galleries Ltd. & Ors. [1973] AC 360 (foll)
Re Senson Auto Supplies Sdn. Bhd. [1988] 1 MLJ 326 (not foll)
Re Sin Lee Sang Sawmill Sdn. Bhd. [1990] 1 MLJ 250 (not foll)
In the Matter of Tahansen Sdn. Bhd. [1984] 1 MLJ 204 (foll)

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Legislation referred to:

Companies Act, 1965, ss. 181, 218(1)(i)
English Companies Act 1948, s. 222(f)

For the petitioner - Liza Chan (Peter Yip with her); M/s. Peter Yip & Yong
For the respondents - M. Nagarajah; M/s. Shook Lin & Bok

JUDGMENT

Siti Norma Yaakob J:

In these 4 consolidated petitions, the parties who are the shareholders of the 4 companies sought to be wound up under s. 218(1)(i) of the Companies Act, 1965 (the Act), agree as a matter of convenience to proceed with the first of such petitions filed in D2-28-187-90 and that orders to be made in this first petition will govern the other petitions as well.

The dispute in D2-28-187-90 is very much a family dispute and it concerns the right to be entitled to enjoy the fruits of investments made by the petitioner, Woodsville Sdn. Bhd., with Tien Ik Enterprises Sdn. Bhd., the 1st respondent, the company sought to be wound up.

The petitioner is a nominee company of Peter Kuok Khoon Hwong (Peter), the eldest of 7 siblings of Kuok Hock Chin (Kuok Sr.). The 7 siblings are

- (1) Peter Kuok
- (2) Joshua Kuok
- (3) Helen Kuok
- (4) James Kuok
- (5) Andrew Kuok
- (6) Irene Kuok
- (7) David Kuok

Thus the 2nd, 3rd and 4th respondents are Peter's brother and sisters whilst the 5th respondent is Peter's nephew, he being the son of Joshua, the 2nd of the 7 siblings. James is not cited a party as he had already filed separate proceedings against the 1st and 2nd respondents in Singapore and Malaysia and he has settled his claims against them. The other sibling, Andrew, has also brought separate proceedings against the 1st and 2nd respondents for an account of his share in the 1st respondent and the matter is still pending.

The 1st respondent was incorporated on 7 March 1978, with an authorised capital of RM2 million, divided into 2 million shares at RM1.00 each. To date it has paid up capital of RM1 million, divided into 1 million shares of RM1.00 each. It was incorporated to carry on business as general traders including the buying and selling of all forms of investments. The petitioner who is Peter's investment arm, is a shareholder, so too Parquin Sdn. Bhd., K-Crest Sdn. Bhd., Milverton Sdn. Bhd. (the nominee companies of the 2nd, 3rd and 4th respondents respectively), the 5th respondent and Andrew in equal shares. Up to 1989, Peter was a director but presently the board is made up of the 2nd - 5th respondents.

The 1st respondent is one of an array of companies set up in 1978 in Malaysia, Singapore and Hong Kong as the vehicles to further the family fortune. The other companies are

<i>a</i>	Malaysia	Year incorporated
	1. Tien Ik. Sdn. Bhd. (TISB)	1973
	2. The 1st respondent	1978
	3. Tien Ik Credit Sdn. Bied. (TISCB)	1978
	4. Giltspur Holdings Sdn. Bhd.	1978
<i>b</i>	These 4 Malaysian companies form the subject matter of the 4 consolidated petitions.	
	Singapore	
	5. Tien Ik Holdings Pte. Ltd.	1973
	Hong Kong	
<i>c</i>	6. K-Rex Holdings Ltd.	1978
	7. K-Rex Insurance Ltd.	1978
	8. K-Rex Enterprises Ltd.	1978
	9. Giltspur Enterprises Ltd.	1978
	10. Omsby Trading Ltd.	1978
	11. Worldport Trading Ltd.	1984
<i>d</i>	12. Giltspur Nominees Ltd.	1978

I shall refer to all these companies as the family companies.

e There was also in existence two family trust funds. The first of these, known as the KHC Trust Fund, was set up in 1974 and the primary beneficiaries were Kuok Sr., his wife, children and grandchildren. Under the terms of the trust deed, Unipar Sdn. Bhd. was appointed the sole trustee with powers to determine the vesting day and the ultimate beneficiaries. This trust became vested on 30 June 1983, and Peter's 1/6th share as well as the shares of the other siblings were ploughed into the pool fund in 1984, the details of which are discussed further in this judgment.

f The other family trust fund was the Peduka Trust set up in Hong Kong in 1978 to regulate all the proceeds of sale of all the overseas assets belonging to the family of Kuok Sr. This trust became vested in 1984 and Peter became entitled to a 1/6th share.

Besides the two trust funds, there were 2 other family companies set up by Kuok Sr. and the members of his immediate family, these being

- g* (1) Kuok (Singapore) Pte. Ltd., a company incorporated in Singapore (the Singapore company).
- (2) Kuok Brothers Sdn. Bhd., a company incorporated in Malaysia (the Malaysian company).

All the 7 siblings hold a substantial amount of the shares in both the Singapore and Malaysian companies.

h In 1977, following differences between Kuok Sr. and his brother, Kuok Sr. and members of his family withdrew from the Singapore and Malaysian companies and sold their holdings in both the companies. For this purpose, Peter appointed two of the family companies, TISB and Tien Ik Holdings Pte. Ltd., as his agents to sell his shares.

i Kuok Sr. then got his children to pool the proceeds of sale of all their holdings in the Singapore and Malaysian companies into a common pool for the purpose of reinvesting their moneys jointly. This pool fund was set up in January 1978 and over the years, this pool

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swelled as whatever moneys were due to the siblings were paid into the pool fund for further reinvestment. Kuok Sr. relied and depended on the 2nd respondent, his youngest son and a Chartered Accountant, to manage the pool fund and this triggered the start of the many differences amongst the siblings.

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To being with, James fell out with Kuok Sr. and the 2nd respondent in August 1978 when he questioned the 2nd respondent about the investments he was making from the pool fund. Dissatisfied with the way the 2nd respondent was managing the pool fund, he opted to withdraw on condition the 2nd respondent supplied him with an account of all the investments the 2nd respondent had made up to 16 September 1978.

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The 2nd respondent produced such an account and handed it together with a declaration deed for James to sign. In essence, the deed required him to relinquish all his claims against other members of the family and the family companies in return for approximately RM5 million due to him from the pool fund.

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At about the same time too, the 2nd respondent produced a progress report dated 7 August 1978, setting out the investments he had made with the pool fund through the family companies and circulated it to his brothers and sisters.

James refused to accept the accounts prepared by the 2nd respondent nor sign the declaration deed and the upshot of this was that he instituted legal proceedings in Singapore and Malaysia to enforce his entitlement of his share in the pool fund notwithstanding the deployment of the pool fund into the family companies. Both suits have been settled in 1984 and James was paid approximately RM3.8 million.

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Kuok Sr. died on 3 November 1979, and this further widened the differences of the siblings particularly over the 2nd respondent's management of the pool fund.

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Andrew and the 2nd respondent fell out over certain investments in Hong Kong resulting in Andrew leaving the Hong Kong companies which he had been managing until then. On 25 September 1980, he indicated his desire to withdraw from the pool fund, effective from 31 August 1980, and he requested the 2nd respondent for an account to be taken of his entitlement.

f

When the 2nd respondent failed to do so, Andrew sought the good offices of the family solicitor in Singapore in May 1981 to intercede on his behalf. Despite attempts made by the family solicitors and other members of his family, the 2nd respondent did not produce any accounts. Finally, on 13 February 1986, Andrew sued Peter, the 2nd - 4th respondents, his mother as the administratrix of the Estate of Kuok Sr., and Unipar Sdn. Bhd., trustee of the KHC Trust Fund, in Kuala Lumpur civil suit no. 22-28-86 seeking a declaration that the pool fund ended on 31 August 1980, and the 2nd respondent account for his share of the pool fund. This suit is still pending.

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The 2nd respondent has not denied that the 1st respondent and the other family companies are vehicles for investing the pool fund and that he actively managed the pool fund during his father's lifetime and after his father's death, until 3 December 1986, when he indicated his intention to relinquish all his executive functions in the 1st respondent and the other family companies citing ill-health and the breakdown of his marriage as the reasons for his withdrawal.

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From 1987 until 1989, Peter took over the reins of managing the 1st respondent and the other family companies and it was in 1987 that the siblings agreed that the pool fund be distributed and that they be paid the capital of all investments made with the pool fund in

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- a** the family companies of which they are shareholder. As this entails the winding up of some of the family companies concerned and a drawing up of accounts of the pool fund and the family companies, Peter engaged the services of 2 Accountants to look into the accounts of the operations of the family companies in Malaysia and Hong Kong. From their investigations, Peter discovered that the 2nd respondent had channelled large sums of the pool fund to a number of overseas corporations, principally Bimelec Investment Corporation incorporated in Panama on 18 October 1977, as the holding company for the family companies incorporated in Hong Kong.
- b**

Peter then appointed a firm of Accountants, Deloitte, Haskins & Sells in Hong Kong (DHS) to audit Bimelec's accounts and the family's Hong Kong companies into which Bimelec had invested the pool fund. DHS was only able to produce a draft account, PK20, and when it was submitted to the 2nd respondent for his review and comments, he only offered general comments which were insufficient to unravel the investments he had made during the past 10 years.

- c**
- Peter also discovered that 2 of the family companies based in Hong Kong, namely K-Rex Enterprise Ltd. and Worldport Trading Ltd., had extended large credit facilities to a group of companies belonging to one William Wong without sufficient securities. Peter then took upon himself to inquire into these lendings as the accounts were all overdue and the result was that on 25 February 1989, he was removed as a director of the 2 companies.
- d**

Peter also discovered that the 2nd respondent had used the pool fund to extend a RM1.4 million loan to Bournemouth Sdn. Bhd. A civil suit was filed in Kuala Lumpur in 1983 to enforce repayment but to date Bournemouth has not paid up.

- e** Following Peter's persistent probings, the 2nd - 5th respondents, as the majority shareholders and directors of the 1st respondent, passed a number of resolutions, all aimed at excluding Peter from the management of the 1st respondent as well as managing the other family companies by removing him as the Chairman and Executive Director of the 1st respondent as well as the director of the other family companies.

- f** Following the passing of the resolutions, the 2nd-5th respondents filed an originating summons, D-24-4-89, against Peter on 23 February 1989, seeking restraining orders against him from managing the 1st respondent. On 27 February 1989, they obtained an *ex parte* interim injunction but on 6 March 1989, the *ex parte* injunction was suspended pending Peter's application to have it set aside. On the same day, Peter and the petitioner obtained an order in separate proceedings filed by Peter and the petitioner, restraining the respondents from effecting the resolutions and excluding them from participating in the affairs of the 1st respondent. In those proceedings, petition no. DI-26-9-89, Peter and the petitioner had also sought relief under s. 181 of the Act on the grounds that the respondents' actions were oppressive. This petition was subsequently withdrawn in October 1989 with liberty to file afresh.
- g**

- h** The 2nd - 5th respondents, through their nominee companies and TISB, had also filed another originating summons, D1-24-121-89, against Peter seeking a declaration that Peter had vacated the office of director of the 1st respondent and TISB with effect from 23 March 1989. Their application for an interim injunction to restrain Peter from holding out as a director of the 1st respondent and TISB, together with the Peter's application to set aside the interim injunction obtained by the respondents in D1-24-41-89, were heard together and on 5 September 1989, Anuar J dismissed the respondents' application in originating summons 24-121-89 and allowed Peter's application in originating summons 24-41-89 on the ground that the resolutions were invalid.
- i**

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Despite this Court order, the 2nd - 5th respondents, through the exercise of their majority votes, appointed an executive committee, the members of which are made up of themselves, to take over the functions of the Board of the 1st respondent and the other 3 family companies sought to be wound up. It was following this last attempt to oust him from the affairs of the 1st respondent that Peter filed this petition through his nominee company, seeking to have the 1st respondent wound up under s. 218(1)(i) of the Act.

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Peter contends

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- (1) that the 1st respondent is a domestic company formed on the basis of personal relationship involving personal trust and mutual confidence amongst brothers and sisters. The association is in the nature of quasi-partnership.
- (2) that the underlying trust and mutual confidence have deteriorated over the years and now cease to exist due primarily to the conduct of the 2nd respondent.

c

For these reasons, it just that the 1st respondent be wound up, particularly when his brothers, sisters and nephew had indicated as long ago as 1987 that their investments of the pool fund in the 1st respondent be distributed to them in the proportion of their shareholdings.

Whilst the 2nd - 5th respondents are not opposed to the idea of winding up the 1st respondent, they nonetheless prefer a voluntary winding up as opposed to a compulsory one and in his affidavit in reply to the petition, the 2nd respondent, whilst not denying the various averments in the petition, nonetheless gives his version of what had transpired when he was actively managing the family companies from 1978 to 1986 and during the 2 years from 1987 - 1989 when Peter took over from him. The 3rd - 5th respondents have not filed any affidavit and this only means that they knew no more of what was going on in the management of the 1st respondent although they featured prominently during the years 1987 - 1989 when they exercised their voting rights to have Peter excluded from managing the 1st respondent. In any event, the 2nd respondent has affirmed that his affidavit in reply is also made on behalf of the other respondents as well.

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I summarise the sum total of the 2nd respondent's affidavit to be as follows:

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- (1) That the 1st respondent is not a domestic company financed by a partnership fund known as the pool fund.
- (2) That he had the authority to invest the pool fund and manage the 1st respondent.
- (3) That he had produced accounts to the satisfaction of all the family members.
- (4) That as a director of the 1st respondent as well as being an advocate and solicitor, Peter should have, with due diligence inquired into the financial status of the 1st respondent and if there had been irregularities, he should have voiced the same then. Delay and the motive of instituting these proceedings would work against the petitioner.
- (5) That during the 2 years when Peter was the executive chairman of the 1st respondent, he, Peter, through the appointments of his nominee Directors on the Board, tried to take full control of the 1st respondent and it was to prevent this happening that the 2nd - 5th respondents passed a number of resolutions which became the subject matter of a number of suits filed by the respondents against Peter and *vice versa* in 1989.

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- a* (6) That there is no loss of trust or confidence amongst the shareholders of the 1st respondent but that the shareholders have lost faith in Peter's ability to manage the affairs of the 1st respondent.
- (7) That although the other shareholders have expressed their desire for the return of their capital, this can be achieved through a voluntary winding up of the 1st respondent as opposed to a compulsory winding up by an order of Court.
- b* Despite obtaining a Court order and giving notices of their intention to cross-examine each other on the affidavits filed by the petitioner and the respondents, the parties however decided against doing so and were content to rely on their respective affidavits to support or oppose the petition.
- c* From the averments of the affidavits filed by both the petitioner and the respondents, it becomes necessary to determine firstly the true nature of the 1st respondent, the purpose of its incorporation and its composition as these factors can indicate the underlying rights and obligations which the members have towards each other.
- In this instance, the petitioner contends that the 1st respondent is a company where the relationship between the members is akin to partners, i.e. a quasi-partnership corporation, a contention which is strongly opposed by the respondents on the grounds that the 1st respondent does not meet with all the 3 criteria enunciated in *Ebrahimi v Westbourne Galleries Ltd. & Ors.* [1973] AC 360.
- d* In *Ebrahimi's* case, the application of the "just and equitable" provision of s. 222(f) of the English Companies Act 1948, which is in *pari materia* with our s. 218(1)(i), was discussed to be as follows:
- e* The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations *inter se* which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts,
- f* this definition is sufficient and exhaustive, equally so whether the company is large or small. The "just and equitable" provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the Court to dispense him from it. It does, as equity always does, enable the Court to subject the exercise of legal rights to equitable considerations: considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.
- g* It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a preexisting partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business, (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.
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It is these 3 elements appearing in the judgment of Lord Wilberforce which Mr. Nagarajah, Counsel for the respondents, submits should be complied with by the 1st respondent before it can be regarded as a company which can be imbued with the characteristics of a quasi partnership association. I cannot accept this contention as the judgment does not say that. It merely sets out the circumstances under which the equitable considerations can be adopted and by way of an illustration, the 3 elements were stated as examples of circumstances where the just and equitable provision can apply. I emphasise that *Ebrahimi's* case does not lay down any test when the "just and equitable" provision can be applied. On the contrary, Lord Wilberforce has warned against limiting the meaning of the clause "just and equitable" and that it is wrong to create categories or headings under which cases must be brought if the clause is to apply.

I now come to the facts of this case.

It is not disputed that the 1st respondent was incorporated in 1978 at about the same time the pool fund was established in January of the same year. It was incorporated during Kuok Sr.'s lifetime and being one of the family companies, it can only mean that the 1st respondent was intended to be the vehicle through which the family fortune was to be further enhanced.

In 1978, the source of that family fortune came from the pool fund which was set up by Kuok Sr. for the benefit of his 4 sons, 2 daughters and grandson. There must have been some understanding as to the management of the pool fund and in this instance the respondents have not denied the petitioner's contention that the common understanding between them was that Kuok Sr. would manage the pool fund with the assistance of his children during his lifetime and upon his death or retirement, all his children would have an equal say in the management and eventual disposal of the pool fund.

Initially the pool fund came from the proceeds of sale of the family's shareholdings in the Singapore and Malaysian companies. In the case of Peter's share in the 2 companies, he had authorised his agents, TISB and Tien IK Holdings Pte. Ltd., to sell his shares. As the 2nd respondent had the control of TISB and Tien Ik Holdings Pte. Ltd., it is his contention that he had not only the authority to sell Peter's shares in the Singapore and Malaysian companies but the authority to invest the proceeds of sale in companies set up for that purpose and it is this authority to invest which empowers him to incorporate the 1st respondent and manage it as well.

I cannot accept this contention, as from the contemporaneous document, this being Peter's letter of authorisation dated 8 January 1978, it merely empowers TISB and Tien Ik Holdings Pte. Ltd. to sell the shares on behalf of Peter, but is silent regarding the investment of the proceeds of sale. Perhaps the power to invest may well have come from Kuok Sr. himself, as it was following the sales of the family's holdings in the Singapore and Malaysian companies that the pool fund was created and it is now too late for Peter to object to the manner in which his investments had been reinvested further through the formation of the 1st respondent and the other family companies particularly when he holds shares in those companies.

From the very beginning to this day, the members of the 1st respondent, who provided the capital for the company from the pool fund, were confined to the children of Kuok Sr. or their nominees and in that sense it is a domestic company. Although they subscribe to the memorandum and articles of association, I consider that from the nature of the formation and set up of the 1st respondent, their obligations as members go beyond that

a laid down by the memorandum and articles of association. The 1st respondent is definitely a family association made up by the children and grandson of Kuok Sr. and it is their personalities as such that single out the 1st respondent to be a company where the members' relationship is akin to that of partners.

b The respondents have also argued that the just and equitable provision is not applicable to the facts of this case as Peter had taken 12 years from the time he was aware of the irregularities in 1978 until this petition is filed in 1990, to seek redress. Delay, they contend, defeats his claims, so too the motive behind the presentation of this petition.

c It must be remembered that it was only in 1987 that Peter became active in the affairs of the 1st respondent. It is also true that prior to that, he was already made a director of the 1st respondent and from the proceedings filed by James and Andrew, he was aware of the irregularities created by the 2nd respondent. Under these circumstances, it must also be appreciated that all the parties are related to each other by blood and there is, therefore, that natural tendency that family matters be settled amicably amongst them by way of discussions or through the intermediary of a trusted family member. It is this blood relationship I consider to be the deciding factor of the reluctance to have family matters publicly discussed and determined by way of a Court action. In any event, prior to 1987, Peter had distanced himself by setting up his practice in Tawau and eventually when he took up the reins of management in 1987 and saw the extent of the irregularities, he had in 1989, presented Petition No. D2-26-9-89 seeking, *inter alia* relief under s. 181 of the Act. Given the special circumstances of this case, the position that Peter was placed in, I do not consider that the delay that occurred can prejudice his right to have this petition presented and determined. On the peculiar facts of this case, there is no question of Peter having consented to the 2nd respondent's irregular conduct and it is quite unlike the situation created by the parties in *Re Senson Auto Supplies Sdn. Bhd.* [1988] 1 MLJ 326, and in *Re Sin Lee Sang Sawmill Sdn. Bhd.* [1990] 1 MLJ 250.

f As for questioning Peter's motive in presenting this petition, he, Peter, cannot be equated to the position of the creditor seeking the winding up of a company to enforce a debt due from the company. In this case the 1st respondent is primarily an investment company which is an accepted fact and I see nothing unreasonable or inequitable for Peter to want a return of his investments.

g Just as the 2nd respondent questions Peter's inequitable conduct, the 2nd respondent's conduct is also not above reproach. During the period from 1978 - 1986, as the member who ran the 1st respondent single handedly, he was accountable to all the other members for the investments he had made from the pool fund. He only did so in 1985, in respect of the investments he made in 1978, but the accounts he produced was only in respect of one month, January 1978. There is no statement of accounts from 1979 until 1986 although he had also exhibited in his affidavit all the administrative decisions he had taken in 1978 but not the period after that.

h Then finally when he relinquished control of the 1st respondent to Peter, the 2nd respondent, togetherwith the 3rd - 5th respondent, had passed a number of resolutions that became the subject matter of various suits brought by all the members against each other in 1989.

i In the light of the scenario that I have painted, is there any justification for this Court to wind up the 1st respondent under the just and equitable provision of s. 218(1)(i) of the Act?

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I answer this in the affirmative for the following reasons.

1. The mutual trust and underlying confidence, which formed the basis of the association, have ceased to exist altogether. This is evidenced by James and Andrew pulling out of the pool fund and the presence of the many legal actions which the other members of the family had filed against each other in 1989 over the same subject matter, i.e. the return of their capital in the pool fund through the investments made by the 2nd respondent in companies like the 1st respondent and the other family companies established for that very purpose.
2. The present state of affairs of the 1st respondent could not possibly have been contemplated by Kuok Sr. or the parties in this petition when they agreed to pool their resources and became members of the 1st respondent.
3. With the exception of the 5th respondent, age is running against Peter and the 2nd - 4th respondents. Peter is now 63 and he should not be allowed to wait for his money forever. The 1st respondent is solvent. It has no creditors but it has never declared any dividends.
4. All the shareholders, without exception, have declared their intention to have the 1st respondent wound up as long ago as March 1987, but no steps have been taken until now to fulfill that common intention.

In this instance, the 2nd - 5th respondents prefer a voluntary winding up as opposed to a compulsory one but on the peculiar facts of this case, I see no justification in so ordering as I envisage that this family dispute will not reach any finality if left in the hands of the shareholders. In all probability, the same situation would be re-created as that existed in 1989 when the 2nd - 5th respondents, in the exercise of their majority votes, would control the Liquidator to the exclusion of the petitioner if the 1st respondent is voluntarily wound up.

On the facts of this case, it was only just and equitable that a Court appointed Liquidator be directed to take over the affairs of the 1st respondent. Since consents have already been obtained from 2 persons, I make the following orders as regards this petition:

- (1) That the 1st respondent be wound up under s. 218(1)(i) of the Act.
- (2) That Mustapha Mohamed and Gong Wee Ning of Messrs. Coopers & Lybrand be appointed liquidators of the 1st respondent, and
- (3) That the costs of this petition be paid out of the assets of the 1st respondent.

The respondents have applied for leave to appeal to the Supreme Court as well as a stay of execution of the winding up order. I have allowed leave to appeal but not a stay on the grounds that the respondents had failed to provide me with sufficient proof under s. 243 of the Act that the winding up ought to be stayed. Moreover, as a matter of practice, a stay is never granted. *In the Matter of Tahansan Sdn. Bhd.* [1984] 1 MLJ 204.